

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

GARY LEE VANSCHOIACK,)
Plaintiff,) 4:05cv3301
vs.) MEMORANDUM AND ORDER
SAMUEL STARKEY,)
Defendant.)

This matter is before the court on Filing No. 8, the Order on Initial Review in which Magistrate Judge F. A. Gossett ordered the plaintiff, Gary Lee Vanschoiack, to file an Amended Complaint by no later than April 24, 2006, in the absence of which this case would be subject, without further notice, to dismissal without prejudice. As Magistrate Judge Gossett pointed out in Filing No. 8, the plaintiff, a prisoner, complained of treatment by officials who operate the Fillmore County Jail, but the only person named as a defendant in the caption of the complaint was an inmate who assaulted the plaintiff.¹ The plaintiff has not filed an Amended Complaint or otherwise responded to the Order on Initial Review. In addition to the plaintiff's failure to amend the complaint, it appears that he may have abandoned the above-entitled action after release from custody. Mail from the court to the plaintiff has been returned from the Fillmore County Jail with no forwarding address for the plaintiff. For those reasons, the plaintiff's complaint and this action are dismissed without prejudice.

SO ORDERED.

DATED this 10th day of May, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge

¹As to the inmate, Magistrate Judge Gossett correctly stated that, while the plaintiff may bring claims of assault and battery under state law in a state court against the Nebraska inmate who assaulted him, no basis for subject matter jurisdiction in this court appears in the complaint for the plaintiff's claims against the inmate. It is unlikely that the inmate acted "under color of state law" for purposes of 42 U.S.C. § 1983, as such a defendant is not employed by, and does not act for, the State or any political subdivision of the State of Nebraska.